City of Lafayette Staff Report

To:	Lafayette City Council
From:	Steven Falk, City Manager
Date Written:	11/14/2008
Meeting Date:	11/24/2008
Subject:	Recording of Shared Equity Transfer

Background
As a financial incentive to encourage the City Manager to reside within Lafayette's city limits, in 1996 the City took a $100,000 (or 23.5%) ownership share in the City Manager's house. In 1999 the City Council amended the City Manager's Employment Agreement to include a provision that transfers, annually, 5% of the City's equity in the Manager's house -- or 1.18% of total house value -- to the Manager.

Per these terms, the City Council adopted a memorandum of understanding (MOU) in 2002 that transferred three year's (1999, 2000, 2001) equity to the Manager; in 2003 that transferred two year's (2002, 2003) equity to the Manager; in 2005 that transferred two year's (2004, 2005) equity to the Manager, and in 2007 that transferred two year's (2006, 2007) equity to the Manager.

The Manager now wishes to transfer equity for calendar year 2008 and has prepared the attached Memorandum of Understanding to make this transaction effective November 24, 2008.

Recommendation
Direct Mayor to execute the attached MOU on behalf of the City of Lafayette.

MEMORANDUM OF UNDERSTANDING
(Transferring Equity in 1008 Windsor Drive from City to Steven and Nancy Falk)

This agreement is entered into this November 24, 2008 between Steven B. Falk ("Falk") and the City of Lafayette ("City").

RECITALS

A. City employs Falk as its City Manager and his employment is controlled by terms contained in a *City Manager Employment Agreement*, last amended on November 10, 2008.

B. Falk did purchase his primary residence within the City, and per the terms of the *Employment Agreement*, the City provided an equity investment in the residence of $100,000, equal to 23.5% equity interest in 1008 Windsor Drive.

C. Falk and the City entered into a *Supplemental Amendment to Shared Equity Agreement* ("Agreement") on January 5, 2000 that would, each year, transfer equity from City to Falk.

D. Section 2 of the Agreement states terms by which equity is transferred from the City to Falk. The Agreement states that the City shall, on December 31, 1999 and each December 31 thereafter during Falk's employment, transfer 5% of its equity interest in Falk's residence – equivalent to 1.18% of the house value -- to Falk. Falk is to be responsible for taxes and transaction costs associated with each equity transfer. The Agreement further states that Falk may, at his option, delay or defer one or more annual transfers to permit a transfer of more than one year's annual equity interest of 1.18% in order to minimize transaction costs. However, a delay or deferral does not affect the City's annual obligation to make the transfer so long as it represents compensation for a calendar year's employment as City Manager.

E. The Lafayette City Council has heretofore taken actions that transferred nine years (1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007) of equity to the Manager, thus reducing the City's share to (23.5% - (9*1.18%)) = 12.88%.

F. Falk now wishes to effect the transfer of equity for calendar year 2008.

G. Attachment A, based on recent comparable sales in the neighborhood, establishes a value of $955,500 for the house and property at 1008 Windsor Drive.

NOW, THEREFORE, the parties agree as follows:

1. Transfer of Equity: Recalculation of City's Equity Share

As provided in the terms of the *Supplemental Amendment to Shared Equity Agreement*, the City shall reduce its interest in 1008 Windsor Drive by 1.18% for year 2008. The

City's Equity Share in 1008 Windsor Drive is thus (12.88% - 1.18% =) 11.70%, or $111,793.50 effective as of the date of this agreement.

2. Transfer of Equity: Calculation of Falk's Compensation

In accordance with the terms of the *Supplemental Amendment to Shared Equity Agreement*, and upon the parties signing this agreement, the Mayor and City Clerk shall execute the documents necessary to carry out the transfer of the City's equity interest set forth in paragraph 1. Falk is responsible for the transaction costs and taxes associated with the equity transfer.

For tax purposes, the annual compensation resulting from the transfer shall be calculated as follows: $955,500 * 1.18% = $11,275. This amount shall be reported to the appropriate taxing agencies.

3. Instructions to Accounting Department

Upon execution of this memorandum of understanding, the City's accounting department shall make changes necessary to effect this agreement and to report Falk's income to taxing agencies.

The parties have executed this memorandum of understanding on the date written above.

CITY OF LAFAYETTE

By:

_____
Michael Anderson, Mayor

Date:

Attest:

_____
Joanne Robbins, City Clerk

STEVEN B. FALK

By:

_____
Steven B. Falk

Date:

Zillow.com®
Your Edge in Real Estate

1008 Windsor Dr

Lafayette CA 94549

4 beds, 2.0 baths, 2,037 sq ft

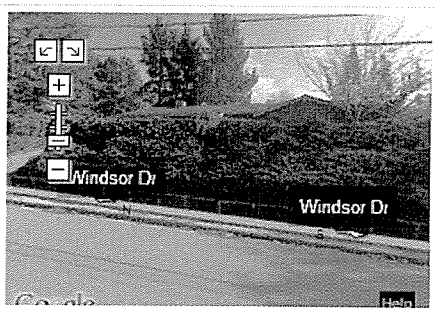
Zestimate®: $955,500

My Estimate:

Monthly Payment: $ 5,255 edit

Refinance now with Quicken Loans!

Street View



Home Info

1008 Windsor Drive, Lafayette, CA

Public Facts:

- Single family
- 4 beds
- 2.0 bath
- 2,037 sqft
- Lot 10,000 sqft
- Built in 1958

Schools:

District:
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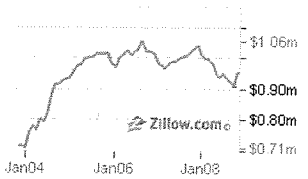
Primary:
Parkmead Elementary ...
Middle:
Stanley Middle Schoo ...
High:
Acalanes High School

See more Lafayette schools

Charts & Data

ZESTIMATE®: $955,500

Value Range: $821,730 - $1,051,050
30-day change: $28,500
Zestimate updated: 11/12/2008



Last sale and tax info

Sold 03/04/1997:
$425,000
2008 Property Tax:
$6,314